



Appeal Decision

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 July 2019

Appeal Ref: APP/W5780/X/18/3214029
99 Horn Lane, Woodford Green, IG8 9AE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Alison Foote against the decision of the Council of the London Borough of Redbridge.
 - The application Ref 2971/18, dated 18 July 2018, was refused by notice dated 12 September 2018.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which a certificate of lawful use or development is sought is loft conversion with rear dormer, two front roof lights and single storey rear extension.
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Preliminary Matter

1. For the avoidance of doubt, I should explain that the planning merits of any proposed future operations are not relevant in the context of an appeal under section 195 of the Act, which relates solely to whether the proposed operations would be lawful. Where an LDC is sought the burden of proving relevant facts rests with the appellant and the test of the evidence is on the balance of probability. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

3. The Council in their assessment report acknowledge that the proposed single storey rear extension and the two front roof lights, as shown on the plans submitted with the application, would be permitted development (PD) by virtue of Article 3 and Classes A and C of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). I come to the same conclusion. Hence the key point of dispute between the parties, and upon which the main issue turns, relates to whether the proposed rear dormer extension would be PD under Class B of Part 1, Schedule 2 of the GPDO.
4. The appeal property, No. 99 Horn Lane, is a two storey mid-terraced house with main roof ridge parallel to the highway. On one side, between it and No. 97, the shared party wall is slightly raised due to the stepping down of

ridge lines in the terrace. The proposed dormer would be created by raising this party wall across its full width, with the dormer extending across the width of the main roof to where it meets the main roof of No. 101.

5. The Council takes the view that the proposal would not be PD because firstly; building up above the full width of the shared party wall would take the development outside of the curtilage of No. 99 and so outside of Class B, and secondly, the proposed use of brick to the side walls of the dormer would not comply with the requirement of B.2(a) - that the materials used in any exterior work must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse.
6. Taking the party wall issue first, I have been referred by both parties regarding this matter to a number of previous appeal decisions¹ which came to differing conclusions, and I am also aware of two later appeal decisions². Having reviewed all of those decisions I place greater weight on those that have taken account of Court judgments which examined how "curtilage" should be interpreted.
7. In this regard it was held in *McAlpine v SSE [1995] 1 PLR 16* that a curtilage comprised three defining characteristics. Those are first; that it occupied a small area around a building, second; it was intimately associated with that building, and third; it had to be regarded as one part of an enclosure with the house concerned. The description of "curtilage" in the Technical Guidance³ (TG) to the GPDO is not inconsistent with the Court's interpretation.
8. It was also held in *McAlpine* that adjoining curtilages could overlap each other or that one could be surrounded by another. I consider this to be particularly relevant in looking at the party wall situation here, where both dwellings rely entirely on the party wall, since if it were removed both would suffer structural collapse. Hence, it must be that the relationship of the party wall is integrally part and parcel of each of the two dwellings curtilages in concordance with the three defining characteristics of curtilage set out by the Court.
9. For these reasons, I find that the dormer extension would be within the curtilage of the host dwelling.
10. The dormer is proposed to be finished in matching hung tiles to the face elevation and brick to the dormer side walls. As required by B.2(a) the materials must be of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse. In this respect the TG advises:

"This means that the materials used should be of similar visual appearance to those in the existing house, but does not mean that they need to be the same materials or match exactly. The visual impacts of the materials used will be the most important consideration".
11. With specific reference to dormers the TG continues its advice on achieving a similar visual appearance to the house by differentiating between a dormer's flat roof, face and sides. It then follows by setting out specific advice with regard to the flat roofs of dormers. It also specifies the approach to be taken for facing a dormer - "...should appear to be of similar colour and design to the

¹ APP/Q5300/X/01/1062324, APP/T5720/C/05/2004639, APP/U5930/X/10/2132832, APP/Q1445/X/15/3005773

² APP/G5750/X/16/3155523, APP/Q1445/X/17/3176838

³ Permitted development rights for householders - Technical Guidance, DCLG, April 2017

materials used in the main roof of the house when viewed from ground level". However, in respect of a dormer's sides it says no more beyond "using materials that give a similar visual appearance to the existing house". Taking account of these factors, and noting that the existing slightly raised element of the party wall is finished in brick, I find that construction of the dormer's sides in brick would not conflict with the wording of the requirement in B.2(a), or with the TG advice, provided that the brick is similar in visual appearance to the brick used in the existing house.

12. I therefore find that the proposed development would be PD and lawful by virtue of Class B of Part 1, Schedule 2 of the GPDO.
13. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC in respect of a loft conversion with rear dormer, two front roof lights and single storey rear extension, was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

Thomas Shields

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 18 July 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development would benefit from the planning permission granted by Article 3 and Classes A, B and C of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Thomas Shields

INSPECTOR

Date 24 July 2019

Reference: APP/W5780/X/18/3214029

First Schedule

Loft conversion with rear dormer, two front roof lights and single storey rear extension

Second Schedule

Land at 99 Horn Lane, Woodford Green, IG8 9AE

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and thus were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 24 July 2019

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Not to scale

